

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 92-2062D/A
	)	
STATE OF TENNESSEE, ET AL.,	)	
	)	
Defendants,	)	
	)	
PEOPLE FIRST OF TENNESSEE,	)	
PARENT GUARDIAN ASSOCIATION	)	
OF ARLINGTON DEV. CENTER,	)	
	)	
Intervenors.	)	

**DEFENDANTS' MOTION TO VACATE ALL  
OUTSTANDING INJUNCTIVE RELIEF AND TO DISMISS THE CASE**

Pursuant to FED. R. CIV. P. 12(b)(6) and 60(b), Defendants respectfully move for an order (i) vacating all outstanding injunctive relief entered in this case, and (ii) dismissing this case with prejudice. In support of this motion, as demonstrated in detail in the supporting memorandum of law filed herewith, Defendants respectfully state as follows:

1. All of the outstanding relief against the State in this case rests on a single legal theory. The United States claimed, and the Court (per Judge McCalla) held, that the Due Process Clause of the Fourteenth Amendment provided residents of Arlington Development Center ("ADC") with a substantive due process right to minimally adequate food, shelter, clothing, and medical care. Liability was imposed against the State on the basis of the Court's 1993 findings that conditions at ADC did not meet these minimum standards. The Court rested its ruling that the Fourteenth Amendment granted Arlington residents substantive due process rights entirely on

the Supreme Court's decision in *Youngberg v. Romeo*, 457 U.S. 307 (1982), in which the Court held that involuntarily committed mentally retarded persons have such rights. See Opinion of the Court (Nov. 22, 1993), Tr. at 13-16; *United States v. Tennessee*, 925 F. Supp. 1292, 1296 & n.3 (W.D. Tenn. 1995).<sup>1</sup> In 1995, this Court extended the finding of liability (and the relief awarded) to the plaintiff class represented by People First of Tennessee, again based on the theory that conditions at ADC violated the substantive due process rights of the members of the plaintiff class. See Order Granting Motion to Enter Findings from 92-2062, entered in No. 92-2213 (Sept. 27, 1995).

2. Shortly after the complaint was filed by the United States, the State moved to dismiss, arguing that the substantive due process rights recognized in *Youngberg* did not exist in this case because Arlington residents are not involuntarily committed, but were brought to the institution by their parents or guardians and left free to leave at any time. The Court rejected this argument, holding that "it is reasonable to infer from the facts as alleged that there is sufficient state action in the process used to admit residents into the facility to trigger substantive due process rights under the Fourteenth Amendment." *United States v. Tennessee*, 798 F. Supp. 483, 487 (W.D. Tenn. 1992).<sup>2</sup>

---

<sup>1</sup> The State was also found liable for violation of the Federal Individuals with Disabilities Education Act for failing to provide required educational services to children at Arlington. This provision is no longer relevant to the case because there are no children remaining at Arlington.

<sup>2</sup> The Court also referenced a state statute that then provided that, once an individual is admitted to Arlington, he or she is under the "exclusive care, custody and control of the commissioner and superintendent," 798 F. Supp. at 487 (quoting TENN. CODE ANN. § 33-5-103), as well as a statute providing that the Superintendent of Arlington may deny a person's request for discharge, *id.* at n.8 (citing TENN. CODE ANN. § 33-5-101(6)). In response to the Court's opinion, the General Assembly repealed TENN. CODE ANN. § 33-5-103, and amended TENN. CODE ANN. § 33-5-101 to make clear that the superintendent *must* discharge any individual who

3. The State respectfully submits that subsequent case law makes clear that residents who have been *voluntarily* admitted to a mental health or other state institution in actuality do not enjoy the constitutional rights recognized in *Youngberg*. Every federal court of appeals to consider the question has so held. *See Brooks v. Giuliani*, 84 F.3d 1454, 1466 (2nd Cir. 1996) (voluntarily committed plaintiffs do not have a claim under *Youngberg*); *Torisky v. Schweiker*, 446 F.3d 438, 446 (3rd Cir. 2006) (same); *Walton v. Alexander*, 44 F.3d 1297, 1303-05 (5th Cir. 1995) (en banc) (same); *Wilson v. Formigoni*, 42 F.3d 1060, 1066-67 (7th Cir. 1994) (same); *see also Monahan v. Dorchester Counseling Center, Inc.*, 961 F.2d 987, 991 (1st Cir. 1992) (in a decision issued prior to the finding of liability in the Arlington case, court held no substantive due process right arises absent involuntary commitment); *Kennedy v. Schafer*, 71 F.3d 292, 294-95 (8th Cir. 1995) (suggesting that voluntarily committed plaintiffs likely do not have a constitutional right under *Youngberg*, but ultimately not deciding the question because “an action for damages brought by a voluntary patient is subject to a qualified-immunity defense”). No federal court of appeals maintains a contrary view.<sup>3</sup>

---

so requests (or whose parent or guardian so requests) within 12 hours after receipt of the request or at the time stated in the request, whichever is later. *See* Tenn. Pub. Acts, pub. ch. 283, H.B. 659, approved by the Governor, May 6, 1993. This remains Tennessee law today. *See* TENN. CODE ANN. § 33-5-303. Thus, it is beyond dispute that *no* resident of ADC is held there against his or will, and all have an absolute right to leave any time they please.

<sup>3</sup> At the time liability was found against the State in this case, the Second Circuit had held that the substantive due process protections recognized in *Youngberg* extended to voluntary residents of a state mental health facility. *See Society for Good Will to Retarded Children v. Cuomo*, 737 F.2d 1239, 1245-46 (2nd Cir. 1984). Since that time, the Second Circuit has recognized that “the reach of *Society for Good Will*” has been limited by later Supreme Court authority; it is now the law that “the involuntary nature of the commitment [is] determinative.” *Brooks*, 84 F.3d at 1466.

4. While the Sixth Circuit has not yet decided this question in a published decision, *see Lanman v. Hinson*, 529 F.3d 673, 682, n.1 (6th Cir. 2008), it has held in an unpublished ruling that a mental health patient could not bring a claim for violation of the substantive due process rights recognized in *Youngberg* because she had been voluntarily committed. *Higgs v. Latham*, No. 91-5273, 1991 U.S. App. LEXIS 25549 at \*\*10-12 (6th Cir. Oct. 24, 1991). Although this decision was rendered before the finding of liability in this case, the State was barred by the Sixth Circuit's then-governing rules from citing its unpublished opinions in this Court. That bar was recently abrogated by the adoption of FED. R. APP. P. 32.1 and the corresponding repeal of the Sixth Circuit's previous prohibition on the citation of unpublished opinions.

5. In sum, the State respectfully submits that the law is now clear that individuals who have not been involuntarily committed to a state mental health facility have no substantive due process right under the Fourteenth Amendment. Accordingly, it necessarily follows that the Remedial Order and all of the subsequent orders imposing relief against the State in this case must be vacated. The law is settled that, where "[t]he foundation upon which the claim for injunctive relief was built has crumbled," *Sweeton v. Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994) (en banc), prospective injunctive relief entered against a State in institutional reform litigation must be vacated. *See also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992) ("modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent").

September 3, 2008

Respectfully submitted,

ROBERT E. COOPER, JR.  
Attorney General and Reporter

/s/ Dianne Stamey Dycus  
DIANNE STAMEY DYCUS (9654)  
Deputy Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-6420  
[Dianne.Dycus@ag.tn.gov](mailto:Dianne.Dycus@ag.tn.gov)

/s/ Charles J. Cooper  
CHARLES J. COOPER  
MICHAEL W. KIRK  
BRIAN S. KOUKOUTCHOS  
RACHEL CLARK  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600

LEO BEARMAN, JR. (8363)  
BAKER, DONELSON, BEARMAN, CALDWELL  
& BERKOWITZ  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103  
(901) 526-2000

JONATHAN P. LAKEY (16788)  
PIETRANGELO COOK, PLC  
6410 Poplar Avenue, Suite 190  
Memphis, TN 38119  
(901) 685-2662

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of September, 2008, a true and exact copy of the foregoing has been forwarded by the Court's Electronic Filing System to:

Jonas Geissler/Amie Murphy, Trial Attorneys  
U.S. Department of Justice  
Special Litigation Section, Civil Rights Division  
601 D Street, NW  
Patrick Henry Building, Room 5918  
Washington, DC 20004

Judith Gran  
Public Interest Law Center of Philadelphia  
125 S. 9th Street, Suite 700  
Philadelphia, PA 19107

Jack Derryberry  
Ward, Derryberry & Thompson  
404 James Robertson Parkway, Suite 1720  
Nashville, TN 37219

Earle J. Schwarz  
The Offices of Earle J. Schwarz  
2157 Madison Avenue, Suite 201  
Memphis, TN 38104

William Sherman  
Attorney at Law  
809 N. Palm Street  
Little Rock, AR 72205

Nancy Ray, Ed.D.  
Court Monitor  
NKR & Associates, Inc.  
318 Delaware Avenue  
Delmar, NY 12054

/s/ Michael W. Kirk